

Peace Corps

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(8) The name, address and telephone number of an officer or employee of the Peace Corps who may be contacted concerning procedures for requesting a hearing;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a petition for a hearing as prescribed will stay the commencement of collection proceedings;

(11) The name and address of the office to which the petition should be sent;

(12) That the Peace Corps will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 calendar days from the date of delivery of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representations or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under the Peace Corps Act or the Foreign Service Act, Peace Corps regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, §§3729–3731 of title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under 18 U.S.C. sections 286, 287, 1001, and 1002 or any other applicable authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(17) That proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) Peace Corps is not required to provide prior notice to an employee when the following adjustments are made by Peace Corps to a Peace Corps employee's pay:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting the adjustment; or

(3) Any adjustment to collect a debt of \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature of the amount of the adjustment and a point of contact for contesting the adjustment.

§ 309.16 Review.

(a) *Request for outside hearing.* Except as provided in paragraph (b) of this section, an employee who desires an outside hearing concerning the existence or amount of the debt or the proposed offset schedule must send a request to the office designated in the notice of intent. See § 309.15(a)(8). The request must be received by the designated office not later than 20 calendar days after the date of delivery of the notice as provided in § 309.15(a). The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it. The employee must also

specify whether an oral hearing or a review of the documentary evidence is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to submit timely.* (1) If the employee files a petition for a review after the expiration of the 20 calendar day period provided for in paragraph (a) of this section, the designated office may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control, or because of a failure to receive the notice of the filing deadline (unless the employee has actual knowledge of the filing deadline).

(2) An employee waives the right to a review, and will have his or her disposable pay offset in accordance with Peace Corps' offset schedule, if the employee fails to file a request for a hearing unless such failure is excused as provided in paragraph (b)(1) of this section.

(3) If the employee fails to appear at an oral hearing of which he or she was notified, unless the hearing official determines failure to appear was due to circumstances beyond the employee's control, his or her appeal will be decided on the basis of the documents then available to the hearing official.

(c) *Representation at the hearing.* The creditor agency may be represented by a representative of its choice. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her expense.

(d) *Review of Peace Corps records related to the debt.* (1) An employee who intends to inspect or copy creditor agency records related to the debt in accordance with § 309.15(a) (5), must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be sent within 20 calendar days after receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, copies of such records shall be sent to the employee.

(e) *Oral Hearing.* (1) If an employee timely files a request for an oral hearing under § 309.16(a), the matter will be conducted by a hearing official not under the supervision or control of Peace Corps.

(2) *Procedure.* (i) After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(ii) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (*e.g.* when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing.

(iii) If the hearing official determines that an oral hearing is not necessary, he or she will make a decision based upon a review of the available written record.

(iv) The hearing official must maintain a summary record of any hearing provided by this subpart. Witnesses who provide testimony will do so under oath or affirmation.

(3) *Decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, or the date salary offset will commence, if applicable.

(4) *Failure to appear.* In the absence of good cause shown (*e.g.* excused illness), an employee who fails to appear at a

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hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing upon the request of the creditor agency representative when good cause is shown.

(5) A hearing official's decision is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 only. It does not supersede the finding by Peace Corps that a debt is owed and does not affect the Government's ability to recoup the debt through alternative collection methods under other appropriate methods.

§ 309.17 Procedures for salary offset.

Unless otherwise provided by statute or contract, the following procedures apply to salary offset:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay.

(c) *Types of collection.*—(1) *Lump sum payment.* Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(2) *Installment deductions.* (i) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other regulations or unless the employee has agreed in writing to greater amount.

(ii) Installment payments of less than \$25 per pay period will be accepted only in the most unusual circumstances.

(iii) Installment deductions will be made over a period of not greater than the anticipated period of employment.

§ 309.18 Voluntary repayment agreements as an alternative to salary offset.

(a) In response to a notice of intent, an employee may propose a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any proposal under this paragraph must be received by the official designated in that notice within 20 calendar days after receipt of the notice of intent.

(b) When the Peace Corps is the creditor agency, in response to a timely proposal by the debtor the agency will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the agency's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the Peace Corps decides that the proposed repayment agreement is unacceptable, the employee will have 15 calendar days from the date he or she received notice of the decision to file a petition for a review.

(d) If the Peace Corps decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing and signed by both the employee and a designated agency official.

§ 309.19 Waiver.

(a) Under certain circumstances, employees may have a statutory right to request a waiver of indebtedness. When an employee makes a request under a statutory right, further collection will be stayed pending an administrative determination on the request.

(b) Waiver of indebtedness is an equitable remedy and as such must be based on an assessment of the facts involved in the individual case under consideration. The burden is on the employee to demonstrate that the applicable waiver standard has been met.